



BellSouth Telecommunications, Inc.

333 Commerce Street  
Suite 2101  
Nashville, TN 37201-3300

joelle.phillips@bellsouth.com

Joelle J. Phillips  
Attorney

615 214 6311  
Fax 615 214 7406

August 2, 2002

**VIA HAND DELIVERY**


The Honorable Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: *Generic Docket Addressing Rural Universal Service*  
Docket No. 00-00523

Dear Chairman Kyle:

Enclosed herein for filing, please find the original and fourteen copies of BellSouth's Brief in Support of Motion for Consideration, or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of Pre-Hearing Officer Filed on November 8, 2000. Copies of the enclosed have been provided to counsel of record.

Cordially,



Joelle Phillips

JP/jej

Enclosure

cc: The Honorable Ron Jones, Hearing Officer

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**Nashville, Tennessee**

**IN RE:**        *Generic Docket Addressing Rural Universal Service*  
              **Docket No. 00-00523**

**BELLSOUTH TELECOMMUNICATION, INC.'S**  
**BRIEF IN SUPPORT OF**  
**MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE,**  
**CLARIFICATION OF THE INITIAL ORDER OF HEARING OFFICER**  
**FOR THE PURPOSE OF ADDRESSING**  
**LEGAL ISSUES 2 AND 3 IDENTIFIED IN THE**  
**REPORT AND RECOMMENDATION OF PRE-HEARING OFFICER**  
**FILED ON NOVEMBER 8, 2000**

BellSouth Telecommunications, Inc. ("BellSouth") files this brief as directed by the Hearing Officer during the July 23, 2002 Agenda Conference. BellSouth respectfully shows the Hearing Officer as follows:

**I.        HISTORICAL OVERVIEW OF TOLL SETTLEMENT CONTRACTS IN TENNESSEE.**

Historically in Tennessee, BellSouth and the Independent LECs have reached agreements for jointly provided telecommunications services on a negotiated basis. Those agreements have provided for compensation between those carriers. The agreements were private contracts, negotiated by and between parties without regulatory oversight, involvement, or approval by the Tennessee Public Service Commission ("TPSC") or the Tennessee Regulatory Authority ("TRA"). Similarly, these contracts were not agreements to which the TRA or TPSC were parties.

These agreements have been revisited from time to time. One of the most significant examples in recent years was the intraLATA toll agreement that was reached at divestiture, in the 1984 timeframe. The toll settlement contract reached at that time provided for a pooling of toll revenues among all telephone companies in Tennessee. All billed revenues were collected, remitted to the pool and each company, including BellSouth, drew out its access charges. Any residual revenues left over were divided in proportion to each company's access lines. BellSouth filed the toll tariff and the other

companies concurred in that tariff through the intraLATA Revenue Distribution Fund ("RDF") agreement. Every non-BellSouth company in the state enjoyed an increase in revenues when that plan was established because the access charges were specifically priced for revenue neutrality and the residual money represented a "bonus" of sorts. Under this arrangement, each company (Independent LECs and BellSouth alike) served as the provider of intraLATA toll to its end users on a par basis and shared equally in the rewards and risks of the market.

Then, in the 1992 timeframe, these same companies renegotiated the RDF agreement. This renegotiation was brought about by a series of toll rate reductions that BellSouth made in order to address earnings issues and to prepare for the onset of toll competition. Because those toll rate reductions financially affected the other companies who were parties to the toll settlement contracts, those parties together agreed (again, without TPSC involvement) to modify the RDF to eliminate the residual revenues feature of the earlier agreement. This simply meant that future toll rate reductions filed by BellSouth would have no direct effect on the other companies' revenues and that the market risks were assumed by BellSouth. The access charge rates were re-priced to produce revenue neutrality on the companies. In all other respects, the RDF agreement was left intact. Thus, the other telephone companies continued to concur in the BellSouth tariff and provide service to their customers as in the past. Operationally and administratively there was no change except for the method of calculating the non-BellSouth companies' toll compensation. BellSouth believes that, under this arrangement, many companies have continued to identify themselves, not BellSouth, as the provider of the 1+ intraLATA toll service to their end users. The current agreement obligated no one to do otherwise, or to use the BellSouth branding or logo on the end user bill.

This revised arrangement was acceptable to BellSouth, at that time, because BellSouth's earnings were protected under rate of return regulation and little to no intraLATA toll competition

existed. BellSouth and the Independent LECs understood that this arrangement was interim at best, pending the onset of competition. In fact, the contract specifically included the right to terminate the agreement at will with thirty days notice, in order to facilitate the coming changes.

Competition in toll service has now arrived and is flourishing. With this competition, the need to revise the toll compensation arrangement is essential, as interexchange carriers, independent telephone companies, and CLECs are competing head to head with BellSouth. Already all companies operating in Tennessee have implemented a toll dialing parity plan, which allows all IXC's to compete on an equal basis for ILEC customers. Further, several companies have their own IXC affiliate that is in direct competition with BellSouth and is not handicapped by having to pay the historically high access rates that BellSouth must pay the Independent LECs under the current contracts.

Over the last several years, BellSouth has discussed with a number of the Independent LECs in Tennessee the need to revise the intraLATA toll compensation arrangement. In December of 1999, during a formal meeting to discuss settlements in general, BellSouth stated to those companies that were in attendance that the current agreement is disproportionately burdensome and that BellSouth was evaluating its options to address this burden. While negotiation meetings have continued, no new agreement has been reached. Importantly, BellSouth has never indicated its intent to terminate its service in a fashion that would result in a loss of toll service to end users. Rather, BellSouth has indicated its intent to terminate and negotiate the compensation agreement for carrying toll traffic.

What BellSouth has proposed during these meetings is a further change in the formula for compensation in order to square the contract with the current competitive environment brought about by the establishment of competition in the intraLATA toll market as well as in the local market. BellSouth's proposal is to simply replace the modified RDF with an access-based compensation mechanism. Under the access-based compensation mechanism, each company will keep its end users

originating toll revenue and pay the other companies compensation for completing (serving as a terminating or intermediary function) the calls on the other companies' networks. The access-based compensation mechanism is the one that is most widely used today in other states. Because it is important that all companies charge the same competitively neutral rate for the same use of their network by all companies/competitors, which is not the case today, BellSouth is proposing that each company use its own access tariffs filed (current rates) in Tennessee for the intraLATA toll traffic. Billing of toll charges to end users can continue under the BellSouth tariff at present. Or, each company can set its own toll prices as has already been done by Citizens in Tennessee. Or, still another possibility would be for the 1+ toll calls to be sent to the carrier that an end user has already selected for intraLATA calls.

BellSouth's proposed system, as in the modified RDF, would continue using the same basic process (settlements) for handling the access-based compensation payments. But, as pointed out above, compensation would be based on each company's current intraLATA composite terminating access rate, which should be the same the Independent LECs charge all other carriers except BellSouth.

As noted above, BellSouth stresses that it does not intend to stop carrying toll traffic for end users of the independent companies. Rather, BellSouth's proposed system has been implemented in several of the other states where BellSouth operates without any disruption of service to customers or disruption of the distribution of revenues to the telephone companies.

## **II. RELIEF SOUGHT BY BELL SOUTH'S MOTION.**

The bottom line for BellSouth is that nothing in this docket should delay or stand in the way of reaching a new agreement, and entering into a new contract, governing toll settlements. BellSouth sought reconsideration or clarification of the Order in this docket to reinforce its position that it has the

contractual right to terminate the toll settlement contracts; that while this docket and the toll settlement contracts may raise related issues, the outcome of one need not be determinative of the other, and, finally, to ensure that the Order would not be taken by the independent carriers as a signal that the negotiations regarding this issue, which have been pending for nearly three years, should slow or stop while issues are considered in this docket.

First, renegotiation (or possible termination) of the contracts should proceed unabated (or, in the event negotiation fails, termination should not be precluded), because these contracts have never been regulated by the TRA. Rather, these agreements were entered into between the parties outside of the context of any regulatory proceeding, and they are not governed by any specific standards or rules set by the Authority.<sup>1</sup> Further, the agreements (all of which pre-date the 1996 Telecommunications Act) have not been submitted in the past to the Authority for approval, either pursuant to the Act or otherwise.<sup>2</sup> Although the TRA may have jurisdiction over the parties, it has no statutory authority to alter pre-existing toll settlement agreements between BellSouth and the rural carriers.

Pursuant to Section 65-4-104, Tennessee Statutes, the Tennessee Regulatory Authority has broad "general supervisory and regulatory power, jurisdiction and control over all public utilities . . .

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<sup>1</sup> BellSouth has sought clarification of the statement on page 4 of the Order that "the Tennessee Public Service Commission directed BellSouth Telecommunications, Inc. ("BellSouth") to enter into toll settlement arrangements that were structured in a manner that enable independent companies to maintain their current revenue streams." BellSouth has researched its records of Public Service Commissions orders and has found no order directing BellSouth to enter into such arrangements or addressing whether such arrangements should be structured in a manner to enable independent companies to maintain current revenue streams. BellSouth seeks clarification regarding the specific order on which this statement is based. Clearly, to the extent that no such order exists, the Authority should reconsider the portion of the order based on this presumption. In any event, even if the TRA determines it has jurisdiction over some aspect of toll settlement arrangements, it should decline, as a policy matter to interfere with the terms of those agreements or settlement negotiations regarding those agreements.

<sup>2</sup> It is noteworthy that a past decision by the TRA not to review these contracts was made after many of these same companies argued for precisely this result (*See*, Final Order on Independent Companies and Cooperative's Motion For Clarification of Arbitration Order And Petition For Declaratory Judgment, July 11, 1997, Docket Nos. 96-01152, 96-01271).

for the purpose of carrying out the provisions of this chapter." Given this language, the Authority would appear generally to have jurisdiction over both BellSouth and local rural carriers in matters relating to their respective provisioning of telecommunications service. The real question, however, does not relate to the Authority's jurisdiction *per se*, but rather to whether the Authority has the legal power to alter contracts between BellSouth and the rural carriers. In other words, the question is whether the action sought by the Rural Independent Coalition ("Coalition") in this docket -- i.e., an order that the toll settlement agreements cannot be terminated or modified except in the context of the universal service proceeding -- can be granted by the Authority without exceeding the statutory powers granted to it by the General Assembly. Clearly, the Authority lacks this statutory power, and, for this reason, BellSouth has maintained that it must be permitted to renegotiate these contracts. Obviously, that negotiation is hampered if BellSouth is prohibited from exercising its contractual right to terminate the compensation contract.

As stated above, the Authority has never exercised direct oversight of these agreements, either in regard to their termination, or otherwise. Further, the agreements are drafted to reflect clearly the fact that the parties never contemplated the TRA having any role in this respect. The standard termination language in the agreements states the following:

This Annex will become effective on the date specified and will continue in force thereafter, until terminated upon thirty (30) days prior written notice with or without cause by either party.

(Standard Agreement, § X1).

Thus, the agreements provide on their face that they can be terminated by either party on thirty days notice for any reason.

Second, the renegotiation of these contracts need not be affected by consideration of the toll settlement revenue in this docket. To the extent that a rural company takes the position that the

termination or alteration of settlement agreements reduces the revenues available to support universal service, then this position could properly be considered in this proceeding.

However, the fact that this is an appropriate topic does not mean that the approach that the Coalition apparently advocates is appropriate. The Coalition set forth in its Initial Comments a proposal that amounts to a continuation of the current revenue stream provided to the independents through these contracts. In other words, the proposal is that rural companies would reduce their rates from the levels currently charged, and the fund would be used to replace the reduced revenues. If the Coalition takes a consistent approach with regard to any reduction in the monies it receives from toll agreements, it presumably will argue that rural companies are entitled to receive through the universal service fund a dollar-for-dollar replacement of any such reduction. Again, as BellSouth stated in its earlier Comments, the fund must be sized according to a comparison of revenue and cost. Thus, an analysis based on current revenue as compared to future (reduced) revenue is not appropriate. Consequently, applying the Coalition's approach to any revenue reduction resulting from the termination of toll settlement agreements is inappropriate.

While understanding the desire of the Independents to continue their current revenue streams in the Rural Universal Service docket, BellSouth cannot continue be the insurer of such revenue through these outdated contracts in this competitive market. These contracts, and the ability to terminate them, are entirely separate and distinct from the issue of universal service; BellSouth's rights under these contracts (including the right to terminate) should not be held in abeyance pending some resolution of the USF docket in the future. Stated simply, the TRA can consider the *effect* of termination or alteration of toll settlement contracts without *postponing* alteration or termination of such contracts. Postponing BellSouth's ability to terminate or renegotiate these contracts would not only be unfair,



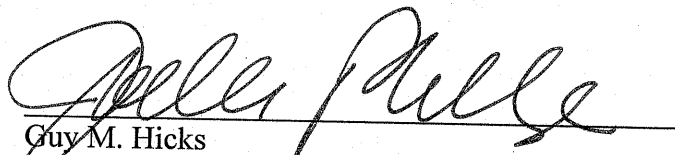
unnecessary, and inconsistent with the Authority's commitment to competition, but also contrary to contract law.

### **III. CONCLUSION**

As BellSouth has stated previously in this docket, and has indicated to the Independent Companies, the toll settlement contracts currently in place are outdated, pre-competition era contracts, which have never been the subject of TRA supervision. By the terms of those contracts, BellSouth is contractually empowered to terminate such arrangements. While the Tennessee Regulatory Authority may well wish to consider the effect of such termination or alteration on Universal Service issues, BellSouth respectfully urges that there is no legal authority under which BellSouth can be ordered to continue to operate under agreements (which, by their terms, are terminable), indefinitely while the TRA considers issues of Universal Service in a complex docket, which is likely to continue for some time.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in dark ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

Guy M. Hicks

Joelle Phillips

333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300  
(615) 214-6301

R. Douglas Lackey  
J. Phillip Carver  
675 W. Peachtree Street NE, Suite 4300  
Atlanta, Georgia 30375

### CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Russ Minton, Esquire  
Citizens Communications  
3 High Ridge Park  
Stamford, CT 06905

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Charles B. Welch, Esquire  
Farris, Mathews, et al.  
205 Capitol Blvd, #303  
Nashville, TN 37219

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Mr. David Espinoza  
Millington Telephone Company  
4880 Navy Road  
Millington, TN 38053

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Jon E. Hastings, Esquire  
Boult, Cummings, et al.  
P. O. Box 198062  
Nashville, TN 37219-8062

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Henry Walker, Esquire  
Boult, Cummings, et al.  
P. O. Box 198062  
Nashville, TN 37219-8062

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

James Wright, Esq.  
United Telephone - Southeast  
14111 Capitol Blvd.  
Wake Forest, NC 27587

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Dan Elrod, Esquire  
Miller & Martin  
150 4<sup>th</sup> Avenue, #1200  
Nashville, TN 37219

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

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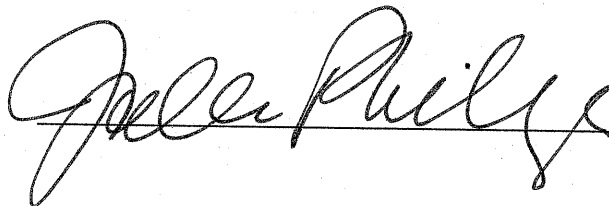
James Lamoureux, Esquire  
AT&T  
1200 Peachtree St., NE  
Atlanta, GA 30309

Donald L. Scholes, Esquire  
Branstetter, Kilgore, et al.  
227 Second Ave., N  
Nashville, TN 37219

Timothy Phillips, Esquire  
Office of Tennessee Attorney General  
P. O. Box 20207  
Nashville, TN 37202

James R. Kelley, Esquire  
Neal & Harwell, PLC  
2000 First Union Tower  
150 Fourth Avenue North  
Nashville, Tennessee 37219-2498

Stephen G. Kraskin, Esquire  
Kraskin, Lesse & Cosson, LLP  
2120 L Street NW, Suite 520  
Washington, D.C. 20037

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